

Thornton's Second Trial.

Part the ——— Price Sixpence.

FAIRBANKS'S EDITION

OF THE

WHOLE PROCEEDINGS

ON THE

WRIT OF APPEAL

OF

WILLIAM ASHFORD,

(Brother of the Deceased)

AGAINST

ABRAHAM THORNTON,

FOR THE

Willful Murder

OF

MARY ASHFORD.

A Beautiful Young Virgin,

who was diabolically ravished, murdered, and thrown into a Pit, as she was
returning from a Dance.

ILLUSTRATED WITH

A PORTRAIT OF THORNTON,

Drawn and Engraved by J. R. CRUIKSHANK.

ALSO,

A CORRECT VIEW OF THE SPOT

Where the Rape and Murder were committed.

London:

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PUBLISHED BY JOHN FAIRBANKS, 2, BROADWAY,
LUDGATE HILL.

Price Sixpence.

Just published, price Ninepence,

FAIRBURN'S EDITION of the **FIRST TRIAL** of **ABRAHAM THORNTON** for the Murder of **MARY ASHFORD**; with the whole of the Evidence, Charge to the Jury, &c. Tried at Warwick Assizes, before Mr. Justice H.royd, on the 8th of August, 1817. Taken in Short Hand. To which are added, Copious Elucidations of this extraordinary Case, and a Correct Plan of the Spot where the Rape and Murder were committed, &c. &c.

Thornton's Second Trial.

FAIRBURN'S EDITION.

No. 1.

THE
WHOLE PROCEEDINGS

ON THE

EXTRAORDINARY

TRIAL

OF

ABRAHAM THORNTON,

FOR THE

Murder

OF

MARY ASHFORD.

ADVERTISEMENT.

The Trial of Abraham Thornton, a second time, for the murder of Mary Ashford, having excited an interest in the public mind that is altogether unprecedented—an interest that has been, if possible, heightened by the very unusual recurrence of the obsolete proceedings necessary in this case by the Saxon Writ of Appeal, together with the staggering fact of Thornton having challenged his appellor, the brother of the deceased Mary Ashford, to the wager of battle, by throwing his gauntlet, and avowing himself ready to defend his innocence with his body, the Publisher feels himself called upon to satisfy the ardent curiosity of the public, in the same manner as on the recent Trial of Watson, by publishing *all the Proceedings*, as they occur, in Numbers

price *Three Half-pence* each, to include the very interesting arguments of the Counsel on both sides, on this romantic and chivalric occurrence; the observations of the Judges; the whole of the evidence, &c. &c.

Arrest of Thornton on a Writ of Appeal—Count of the Appellant—Thornton's Plea and Challenge of Trial by Battle.

ON Thursday, October 9th, 1817, Abraham Thornton was again apprehended, by virtue of a warrant issued by the High Sheriff of the county of Warwick, on a writ of appeal, at the instance of William Ashford, brother of the deceased Mary Ashford. The warrant was received on Thursday afternoon, by Mr. Hackney, sheriff's officer, of Birmingham; who, accompanied by Martin and Baker, two of his assistants, proceeded to Castle Bromwich, and, finding Thornton at the house

her, took him into custody and him to the lock-up house in
cet, Birmingham, the same night.
following morning, about ten
he was conveyed, by Hackney,
se, to Warwick, and safely de-
at the county gaol. Upon being
med by the officer of the nature of
isit, we learn, he quietly submitted,
ithout attempting to offer the least
resistance. We subjoin a copy of the
warrant under which Thornton was ap-
prehended:—

Warwickshire to wit.—The Honour-
able Henry Verney, sheriff of the county
Warwick aforesaid, to John Hackney,
and at his peril to Thomas Martin,
Jonathan Baker, and others, and to the
of the gaol of the said county,

virtue of a writ of appeal of our
reign Lord the King to me directed,
command you and every of you,
tly and severally, that you or one of
you take Abraham Thornton, of Castle
Bromwich, in the parish of Aston, near
Birmingham, in the said county, labourer,
if he shall be found in my bailiwick, and
him safely keep, so that I may have his
body before the Lord the King, on the
morrow of All Souls, wheresoever the
Lord the King shall then be in England,
to answer William Ashford, of the parish
of Hints, in the county of Stafford, la-
bourer, who was the eldest brother and
is the heir of Mary Ashford, late of
Langley; in the parish of Sutton Cold-
field, in my said bailiwick, spinster,
deceased, of the said Mary Ashford,
whereof he appealeth him. Thereof fail
not, as you will answer at your peril.

Wednesday, Nov. 5th, 1817.

This morning at three o'clock Abra-
ham Thornton, accompanied by Mr.
Tatnall and assistant, was removed from
the county gaol, Birmingham, in a chaise
for London, to answer the writ of ap-
peal to be made by the heir-at-law of
the late Mary Ashford. Thornton af-
fected to treat the affair lightly, and
shewed his usual unconcern.

COURT OF KING'S BENCH, WESTMINSTER,
Thursday, Nov. 6.

Michaelmas Term commenced this
day. About one o'clock the Lord
Chief Justice, Mr. Justice Bayley, Mr.

Justice Abbott, and Mr. Justice Hol-
royd, took their places on the Bench.

Messrs. Clarke, Gurney, Richardson,
and Chitty, appeared for the plaintiff
appellant; and Mr Clarke moved that
the Sheriff of the county of Warwick be
called in to make a return to a writ of
Habeas Corpus.

Mr. Gurney desired that William
Ashford should be called; and, answer-
ing to his name, he took his place on the
floor.

The Keeper of the Castle of Warwick
immediately entered the Court, having
in his custody Abraham Thornton, the
individual appealed of the murder of
Mary Ashford, and followed by the ap-
pellant, William Ashford, the eldest
brother and heir-at-law of the deceased.
The parties were dressed in black. Ash-
ford is a simple-looking country lad.
Thornton, who has been described as a
bloated disgusting-looking being, has
been dealt unfairly with by those who
have so depicted him. There is nothing
in his appearance to excite particular
observation. He conducted himself with
the utmost coolness, and bowed respect-
fully to the Court on his entrance.

The Keeper handed up to Mr. Dealtry
the necessary documents, which that
Gentleman proceeded to read.

The first was the writ of *Habeas Cor-
pus*, directed to the Hon. Henry Verney,
High Sheriff of the county of Warwick.

“ WRIT OF HABEAS CORPUS.

“ George the Third, by the grace of
God &c.—To the Sheriff of Warwick-
shire, and also to the Keeper of our
common gaol of Warwick, in our county
of Warwick, or his deputy there, greet-
ing. We command you, that you have
before us on the morrow of All-Souls,
wheresoever we shall then be in Eng-
land, the body of Abraham Thornton,
being committed and detained in our
prison under your custody, as is said,
together with the day and cause of his
being taken and detained, by whatso-
ever name the said Abraham Thornton
may be called, in the same, then and
there to undergo and receive all and sin-
gular such things as our said Court shall
then and there consider of concerning
him in that behalf, and have with you
then and there this writ. Witness,
Edward Lord Ellenborough, at West-
minster, the 20th day of June, in the
57th year of our reign.

“ By the Court, LUSHINGTON.”

The return to the above stated, that before the said writ came to the hands of the Sheriff, viz. on the 10th of Oct. in the 57th year of his Majesty's reign, Abraham Thornton had been committed to his custody by virtue of his Majesty's writ of appeal. That writ was also delivered in by the Sheriff, and it was read in these terms:—

WRIT OF APPEAL.

“ George the Third, by the grace of God, &c. To the Sheriff of Warwickshire, greeting. If William Ashford, of the parish of Hints, in the county of Stafford, labourer, who was the eldest brother, and is the heir of Mary Ashford, late of Langley, in the parish of Sutton Coldfield, in your county, spinster, deceased, shall give you security to prosecute his suite, then we command you, that you attach Abraham Thornton, late of Castle Bromwich, in the parish of Aston, near Birmingham, in your county, labourer, by his body, according to the law and custom of England, so that we may have him before us on the morrow of All Souls, wheresoever we shall then be in England, to answer to the aforesaid William Ashford of the death of the aforesaid Mary, heretofore his sister, and whose heir he is, whereof he appealeth him, and have you there this writ. Witness ourself at Westminster the 1st day of October, in the 57th year of our reign.

“ WELFITT.”

The return was endorsed on the writ in the following words:—

“ RETURN.

“ By virtue of this writ to me directed, the within-named William Ashford, having found and given sufficient pledges to prosecute his within writ of appeal, and his suit in that behalf, and which said pledges are John Coleman, of Langley-heath, in the parish of Sutton Coldfield, in my bailiwick, yeoman, and Charles Coleman, of Edington, in the parish of Aston, near Birmingham, in my said bailiwick, labourer; I have attached the within-named Abraham Thornton, whose body I have in his Majesty's gaol in and for the said county of Warwick, under my custody, to answer the within-named William Ashford of the death of the within-named Mary Ashford, whereof he appealeth him as within-mentioned.

“ The answer of HENRY VERNEY, Sheriff.”

Mr. Clarke next moved, that the defendant be committed to the custody of the Marshal of the Marshalsea.

Lord Ellenborough.—Let him be committed.

Mr. Clarke moved, that the plaintiff might count against the defendant, and that the defendant be placed at the bar for that purpose.

Lord Ellenborough.—Let it be so.

Mr. Reader inquired if the present proceeding were by bill or by original; and Mr. Barlow answered, by original.

The plaintiff then handed his count to his counsel, which was immediately delivered to the officer as the count of the appellant.

Lord Ellenborough (to W. Ashford).—You put in this document as your count in the appeal.

W. Ashford.—Yes.

Lord Ellenborough.—Do you desire that it may be read.

W. Ashford.—I do.

The prisoner having been put to the bar in the custody of the Tipstaff of the Court, the count was read by Mr. Barlow, as follows:—

“ In the King's Bench, Michaelmas Term, 58 Geo. III.

“ Abraham Thornton was attached to answer William Ashford, who was the eldest brother, and is the heir of Mary Ashford, deceased, of the death of the said Mary Ashford; and thereupon the said William Ashford, in his own proper person, instantly appealeth Abraham Thornton, &c. For that he the said Abraham Thornton, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the 27th day of May, in the 57th year of the reign of our Sovereign Lord George the Third, by the grace of God, &c. with force and arms, at the parish of Sutton Coldfield, in the county of Warwick, in and upon the said Mary Ashford, spinster, in the peace of God and our said Lord the King then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Abraham Thornton then and there, feloniously and wilfully, and of his malice aforethought, did take the said Mary Ashford into both his hands, and did then and there feloniously, wilfully, violently, and of his malice aforethought, cast, throw, and push the said Mary Ashford, into a certain pit of water,

ein there then was a great quantity, situate in the parish of Sutton d aforesaid, in the county aforesaid, by means of which said casting, ing, and pushing of the said Mary ord into the pit of water aforesaid, the said Abraham Thornton in form resaid, she, the said Mary Ashford, in pit of water aforesaid, with the water oresaid, was then and there choaked, suffocated, and drowned, of which said choaking, suffocating, and drowning, she, the said Mary Ashford, then and there instantly died. And so the said Abraham Thornton, her, the said Mary Ashford, in manner and form aforesaid, feloniously and wilfully, and of his malice aforethought, did kill and murder, against the peace of our said Lord the King, his crown and dignity. And if the said Abraham Thornton will deny the felony and murder aforesaid, as aforesaid charged upon him, then the said William Ashford, who was the eldest brother, and is the heir of the said Mary Ashford, deceased, is ready to prove the said felony and murder against him, the said Abraham Thornton, according as the Court here shall consider thereof, and hath found pledges to prosecute his appeal.

“(Witness) WILLIAM ASHFORD,

“His X mark.”

Mr. Clarke moved that the defendant be required to plead.

Mr. Reader (for the appellee).—My Lords, the defendant has had no notice of this proceeding; and certainly, with regard to myself, as the papers were only sent to me late last night, I have had no sufficient opportunity to look into the subject. From the rareness of cases of the kind, it will not, perhaps, be expected that I should be at all points prepared, and it is a matter requiring great consideration.

Lord Ellenborough.—What time do you wish for?

Mr. Reader.—I trust that, by appearing now for the prisoner, it will not be considered that I waive any objections I might be entitled to take in his favour. In the case of Bigby, widow, v. Mat. and Pat. Kennedy (5 Burr. 2643, and 2 Blackst. 714.) the Court of its own act adjourned the proceeding to a future day, directing that the parties accused should in the mean time remain in the custody of the Marshal. The counsel on both sides declined moving for an adjournment. I hope the same course will

be adopted to day, and that the subject will be postponed until some time in the next week. May I be permitted to ask, if in cases of this sort, by the practice of the Court, any time be allowed to the defendant to plead?

Lord Ellenborough.—In the case you referred to, a week's time was given. In another case, that of Perry and Nicholl, the counsel moved for an adjournment. Of course the lapse of time will not be suffered to operate against you. The *dies data* will not prejudice you. Any convenient day may be fixed.

Mr. Barlow informed his Lordship, that the delay was allowed generally, not for the purpose merely of giving the defendant time to plead.

Mr. Justice Abbott.—The week's time to plead was given in another case, not in that.

Lord Ellenborough.—Giving that time will not prejudice you when you come up under the rule on the *dies data*: you will be heard without any consideration that you have prayed the delay. What time will be convenient?

Mr. Reader.—Monday se'nnight. In the mean time, it will be necessary for me to pray, on behalf of the prisoner, *oyer* and copies of the original writ, the return, and the declaration.

Lord Ellenborough.—You shall have access to them at any time for your convenience, for the purpose of collecting the contents; but I do not know that the Court is prepared to say, that copies ought to be delivered to you.

Mr. Reader.—In one of the cases now in the hands of your lordships, it was permitted.

Mr. Clarke.—The case alluded to by Mr. Reader was long before the authority in Douglas, where it is said that the Court will not grant *oyer* of the original writ.

Lord Ellenborough.—The last case is that of Bonner; but the proceedings there were *ore tenus*, and the Court did not grant *oyer*. You may have it read, so that you can take down what is necessary for your purpose.

Mr. Reader requested that the officer would read the document slowly, that it might be taken down in short hand.

Lord Ellenborough.—This is a short proceeding, and perhaps a copy may be very material; but it is important that we should adhere to the established course, or the privilege might be claimed in all criminal cases.

The original writ of appeal was then read aloud by the officer of the Court, as well as the return, and the count of the plaintiff appellant; after this had been concluded, Mr. Reader applied to know if, on the future day, the prisoner must attend.

Lord Ellenborough.—Let him be committed to the custody of the Marshal of the Marshalsea, and be brought up again on Monday se'nnight. But the same day the plaintiff appellant may appear.

Mr. Clarke.—I must likewise apply to the Court that the plaintiff may appoint an attorney to prosecute his appeal, and that Mr. John D. Bedford be his attorney for that purpose.

Lord Ellenborough.—Is the warrant prepared, and in Court?

Mr. Clarke replied in the negative; it should be prepared.

Lord Ellenborough.—We cannot act upon what will be done, but upon what is before us.

Mr. Clarke added, that he could apply on another day for the appointment of the attorney.

Mr. Justice Bayley.—You must either do it to-day, or wait until Monday se'nnight.

Mr. Clarke observed, that if that were the case, the plaintiff must remain in town until the day appointed, and then he would appear with the warrant for the appointment of his attorney.

Lord Ellenborough.—You will produce the warrant on the *dies data*.

The defendant then withdrew in custody of the Marshal of the Marshalsea.

COURT OF KING'S BENCH, WESTMINSTER, Monday, Nov. 17.

This morning being appointed for receiving the plea of Abraham Thornton, an immense crowd assembled in the avenues leading to the Court at an early hour, all anxious to be present at a proceeding of such novelty in modern Courts of Justice. Long before the arrival of the Judges, the Court was crowded in every part, and a vast concourse of people nearly filled Westminster Hall, whose curiosity was strongly excited to see the appellant and the appellee. A little before eleven o'clock, Messrs. Clarke, Gurney, Richardson, and Chitty, Counsel for the appellor, and Messrs. Reader and Reynolds for the

appellee entered the Court and took their seats. Soon after which W. Ashford, the appellant, and brother of the deceased, came in, and was placed immediately in front of his Counsel. He is a slight made lad, about 17 years of age, of short stature, sandy hair, and blue eyes.

About the same time the appellee, Abraham Thornton, was conducted in at the side door, in the custody of Mr. Gibbons, one of the Marshal's men, and the gaoler of Warwick Castle. As he came up the hall, the crowd pressed towards him, in order to gain a view of his person, with such violence, as almost to preclude the possibility of his advance. He is a man about five feet four inches in height, very robust, with full cheeks, fresh complexion, and altogether not a forbidding appearance. He had a smile on his countenance, as if from confidence in a favourable result to the proceedings which it has been thought fit to take against him.

At eleven Lord Ellenborough and the other Judges took their seats on the bench, having previously had a consultation in their private chamber, in the course of which they referred to all the ancient authorities on the subject; all other business having been deferred, in order first to dispose of this.

Lord Ellenborough addressed Mr. Reader, counsel for prisoner, and asked him if his client was in Court.

Mr. Reader.—He is, my Lord.

Lord Ellenborough.—Let him be brought forward.

The prisoner was then placed at the bar between Mr. Reader and Mr. Reynolds. He bowed to the Court, and seemed in good spirits. Mr. Le Blanc (the Clerk of the Crown Office) then addressed him in these words—"Abraham Thornton, hearken to the record;" and proceeded to read in a loud voice the count delivered in by the appellor on the first day of term, and which will be found at length in page 70. It commenced by stating, that he, Abraham Thornton, was appealed for the wilful murder of Mary Ashford, late of Castle Bromwich, on the 27th of May, at five in the morning, by seizing her with both his hands, and throwing her into a pool of water, whereby he occasioned her death. Mr. Le Blanc concluded by saying, "Are you guilty, or not guilty, of the said felony and murder whereof you stand so appealed?"

* Reader now put into the prisoner's hand a slip of paper, from which the Prisoner read, rather inaudibly—*of guilty; and I am ready to defend mine with my body.*"

th. Reader had likewise handed a pair of large gauntlets, or gloves, to the prisoner; one of which he put on, and the other, in pursuance to the old form, he threw down upon the floor, between the bar and the bench, for the appellant to take up. In falling, it struck the head of the appellant, Wm. Ashford, who sat before the appellee. It was not taken up; and

Mr. Reader moved that it should be kept in the custody of the Officer of the Court.

Mr. Le Blanc.—Your plea is, that you are not guilty; and that you are ready

to defend the said plea with your body?

The Prisoner.—It is.

Lord Ellenborough.—Is the appellant in court?

Mr. Clarke.—He is, my Lord.

Lord Ellenborough.—Call him by name.

The Usher then called, "William Ashford, come into court."

The Appellant then stood up, on the floor of the court, in front of Mr. Clarke.

Mr. Clarke then addressed the Bench as follows:—My Lords, I did not expect at this time of day to have heard this sort of demand made in answer to the charge that has been brought against the prisoner, namely, that the issue should depend, not upon a trial before a jury, but upon a trial by battle*: at least we may say that it is an obsolete practice, which

* The form and manner of waging battle upon appeals of murder are much the same as the ancient mode upon a writ of right, only the oaths of the two combatants are vastly more striking and solemn. The appellee, when appealed of felony, pleads not guilty, and throws down his glove, and declares he will defend the same by his body; the appellant takes up the glove, and replies, that he is ready to make good the appeal, body for body; and thereupon the appellee, taking the book in his right hand, and in his left the right hand of his antagonist, swears to this effect:—"Hoc audi, homo, quem per manum teneo, &c."—"Hear this, O man, whom I hold by the hand, who callest thyself John by the name of baptism, that I, who call myself Thomas by the name of baptism, did not feloniously murder thy father, William by name, nor am any way guilty of the said felony: so help me God and the Saints! And this I will defend against thee by my body, as the Court shall award!" To which the appellant replies, holding the Bible and his antagonist's right hand in the same manner as the other, "Hear this, O man, whom I hold by the hand, who callest thyself Thomas by the name of baptism, that thou art perjured; and therefore perjured, because that thou feloniously didst murder my father, William by name; so help me God and the Saints! And this I will prove against thee by my body, as this Court shall award!"

The battle is then to be fought with the same weapons, viz. batons, the same solemnity, and the same oath against amulets and sorcery, that are used in the civil combat; and if the appellee be so far vanquished that he cannot or will not fight any longer, he shall be adjudged to be hanged immediately: and then, as well as if he be killed in battle, Providence is deemed to have determined in favour of the truth, and his blood shall be attainted. But if he kills the appellant, or can maintain the fight from sun-rising till the stars appear in the evening, he shall be acquitted. So also, if the appellant becomes recreant, and pronounces the horrible word *craven*, he shall lose his *liberam legem*, and become infamous; and the appellee shall recover his damages, and shall be for ever quit, not only of the appeal, but of all indictments likewise for the same offence.

The last time that the trial by battle was awarded in this country, was in the case of Lord Rea and Mr. Ramsey, in the 7th Charles I. The King, by his commission, appointed a constable of England to preside at the trial, who proclaimed a day for the duel, on which the combatants were to appear with a spear, a longsword, a short sword, and a dagger; but the combat was prorogued to a further day, before which the King revoked the commission.

The last case of appeal in this country was the case of Smith, widow, v. Taylor, reported in 5th Barrow, 2719, in the year 1771. The defendant had been indicted of the wilful murder of the appellant's husband, it appearing that the deceased was stabbed by the prisoner (a soldier in the King's Guards) in a public-house squabble, and the Jury returned a special verdict, leaving it to the Court of King's Bench to

has long since been out of use.—It would appear to me a very extraordinary and astonishing circumstance, that a person, in these enlightened times, charged with the crime of murder, should be permitted to repel that charge by committing another murder: such a proceeding is both ancient and barbarous. But I shall exhibit the appellor before your Lordships, and you will see that he is not a person——

Lord Ellenborough (interposing).—I wish to correct an expression you have used: you say, “by committing another

murder;” if it be the law, what the law authorizes is not murder.

Mr. Clarke.—I beg your Lordship pardon; I should have said, “by killing the brother of the person murdered.” I apprehend that, on inquiry, your Lordships will find that the allowance of this plea is in a great measure discretionary and it will be for the Court to determine, under all the circumstances, whether they will permit a battle to be waged in this case, or not. I do not say that it is a matter entirely discretionary, but that it depends in some degree upon

determine whether the offence proved against the defendant was murder or manslaughter. The Court, upon mature deliberation, held it to be only manslaughter; and the defendant underwent the punishment of burning in the left hand, which was forthwith executed in open Court. Elizabeth Smith afterwards appealed the defendant of the death of her husband, when the defendant pleaded in bar of the appeal, his conviction and punishment for the offence of manslaughter, which the Court holding to be a good plea, the appeal was non-suited, and the defendant discharged.

This was the last case of this sort brought before an English court of justice. There is now an appeal of murder under the consideration of the Court of King's Bench in Ireland, as our readers will have observed from the newspapers; but the defendant having, by the advice of his counsel, Mr. McNally, claimed his wager of battle, the court seem to have been under some difficulty how to act, and have from time to time postponed their judgment, and the case is now gone off till next term.

“An appeal,” says Mr. Justice Blackstone, vol. iv. p. 312, “in the sense wherein it is here used, does not signify any complaint to a superior court of an injustice done by an inferior one, which is the general use of the word; but it here means an original suit at the time of its first commencement. It is derived from the French ‘*appellee*,’ the verb active, which signifies to call upon, summon, or challenge one; and not the verb neuter, which signifies the same as the ordinary sense of ‘appeal’ in English. An appeal, therefore, when spoken of as a criminal prosecution, denotes an accusation by a private subject against another for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public.”

An appeal by an innocent person is the party's private action, prosecuting only for the Crown in respect of the offence against the public, which he may do two ways: 1st, by *Writ*; and, 2d, by *Bill*. A writ of appeal is an original issuing out of Chancery, and returnable in the King's Bench only; and a bill of appeal must contain greater certainty than a writ of appeal, and is in lieu both of the writ and declaration. It is a trial upon issue joined, and may be determined by a jury of the county where the offence is committed, as in case of indictment when there is a general plea of not guilty; but the trial by *battle* duel, or single combat, may be demanded at the election of the appellee. This sort of trial is carried on with great solemnity, and was anciently the case on a writ of right, but with this difference, that in the latter case each party might hire a champion, but here they must fight in their proper persons. Therefore if the appellant or approver be a woman, a priest, an infant, or of the age of sixty, or lame, or blind, he or she may counter-plead, and refuse the wager of battle, and compel the appellee to put himself upon the country. There are other exemptions from this mode of trial: for instance, Peers of the Realm bringing an appeal, shall not be challenged to wage battle, on account of the dignity of their persons: nor the citizens of London, by special charter, because fighting seems foreign to their education and employment. So likewise if the crime be notorious, as if the thief be taken with the *mainour*, or the murderer in the room with a bloody knife, the appellant may refuse the tender of battle from the appellee, for it is unreasonable that an innocent man should stake his life against one who is already half-convicted.

reason of the case. If the Court, on exhibition of the appellor, finds that of weak body, and on that account pable, that I believe is sufficient.

r. Justice Bayley.—Have you any thority for so stating?

Mr. Clarke.—My Lord, I have no express authority to adduce beyond example; and the natural suggestions which occur to the minds of every person on a view of the case.

Mr. Reader here interrupted Mr. Clarke, and said—The Court will not suppose that I mean unfitly or unpleasantly to interrupt Mr. Clarke; but I apprehend that he is now adopting a course of proceeding not warranted by any authorities. If there be any objections to the wage of battle demanded by the appellee, they must be made by counter-pleading, and not by statement of counsel, which can produce no benefit to either side, and which may call upon me, on behalf of the prisoner, for answers which I would rather be excused from making.

Lord Ellenborough.—Do you wish, Mr. Clarke, to counterplead?

Mr. Clarke.—Certainly, my Lord; and we humbly move that time may be allowed to enable us to prepare our counter-plea.

Lord Ellenborough.—In a proceeding so antiquated and obsolete, to grant time is certainly a matter of strict justice to you; I do not apprehend that any resistance will be made to it on the part of the appellee.

Mr. Reader.—Certainly not, my Lord. The prisoner is too much indebted to the Court for its kind indulgence already extended to him; it would, indeed, be most ungracious on his part, to make any objection to the grant of any reasonable time, which the Court may think fit to approve.

Lord Ellenborough (to Mr. Clarke).—What time would be convenient to enable you to prepare your counter-plea.

Mr. Clarke.—On Thursday, my Lord, I think I shall be prepared, if that will meet the convenience of the Court.

Lord Ellenborough (after consulting with the other Judges).—Perhaps Friday or Saturday would better suit the time of the Court.

Mr. Clarke.—I shall be ready whenever your Lordships shall appoint.

Lord Ellenborough (after again consulting) said—Let it be Saturday then.

Mr. Reader.—My Lords, with your Lordships' indulgence, I will offer one word, which I do without meaning to give the slightest offence to any one. I need not comment on the awful situation in which the defendant is placed, both with regard to your Lordships and to the public. My Learned Friend, Mr. Reynolds, and myself, in the performance of the anxious duty which has devolved upon us, have thought it right to advise the defendant to put in the plea which has been recorded, and we have no difficulty in declaring that we have done so in consequence of the extraordinary and unprecedented prejudice which has been disseminated against him throughout the country.

Mr. Gurney observed, that in consequence of the confusion prevailing at the time in court, the precise terms of the prisoner's plea had not been heard; he therefore requested, that the Master, to whom the paper had been handed, should read the contents distinctly.

Mr. Reader said, that the appellee pleaded *ore tenus*, but, in order to avoid mistake, the precise form had been written down.

Mr. Le Blanc then read these words—“Not Guilty, and he is ready to defend the same by his body.”

Lord Ellenborough.—Mr. Clarke, as this is a matter of strict form, the court wish to know whether you pray time to counter-plead, or whether you pray time generally?

Mr. Clarke.—To counter-plead, my Lord.

Lord Ellenborough.—Let the prisoner be now remanded, and let him be again brought up on Saturday next, when I expect the appellant will be ready with his counter-plea.

The prisoner was then conducted out of court in the same form in which he had entered. He was again the object of intense curiosity, and could with difficulty be conveyed to the carriage in which he was taken back to the strong room in the King's Bench Prison.

Thornton's Second Trial.

FAIRBURN'S EDITION.

No. 2.

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Appellant's Counter-Plea—A correct View of the Spot where the Rape and Murder were committed.

COURT OF KING'S BENCH, WESTMINSTER,
Saturday, Nov. 21.

This being the day fixed for the putting in of the counter-plea by William Ashford, the appellant, against the plea, claiming the wager of battle, put in by Abraham Thornton, the appellee, on the former meeting of the Court in this matter, an immense concourse of persons had assembled at an early hour, anxiously hoping to catch a view of the prisoner. Westminster Hall and the Court were crowded to excess; and every thing proved that the interest excited by this extraordinary case had hourly increased. Many ladies endeavoured to gain admittance; and several were fortunate enough, through the exertions of their male friends, to gain admittance. It is scarcely necessary to say, that their attention was most anxiously fixed upon the prisoner, regarding him, as they must have done, under the strong presumption of his *guilt*, as the greatest enemy to their sex, in the horrible outrage committed upon one of the most lovely of its members. The subsequent proceedings occasionally called blushes and tears to their cheeks. They stood at the step of the bench, on the right side of the bench—a very inconvenient position; but curiosity is not ceremonious. Thousands of other persons were not, however, so successful; but though they closely besieged every avenue leading to the Court, were unable to get even a glimpse of the prisoner or the seat of justice. The immediate entrances to the Court were kept clear by peace-officers, under the direction of the high-constable of Westminster. The steps immediately leading to the Court were kept completely clear, in order to

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prevent the inconvenience which the judges encountered on Monday last in their way to the bench. The body of the Court presented an almost invaluable mass of persons, either attracted by business or curiosity.

In order to prevent the difficulties which were experienced before in bringing the prisoner to the bar, he was conducted from prison at an earlier hour than usual, to a passage in New Palace Yard, leading by a back way into the body of the Court, and was thus introduced without observation. He was attended by two tipstiffs, Mr. Gibbons, and the gaoler of Warwick Castle. He immediately took his seat at the centre of the bar, one of the turnkeys of the King's Bench, sitting immediately behind him. In his countenance there was depicted the same appearance of easy confidence which we formerly noticed; he smiled and looked around him with perfect indifference. An ordinary spectator, if called upon to point out the man whom it was supposed had committed an atrocious offence, would perhaps have selected the prisoner last. He took his place behind the bar, about the centre of the Court. He was, as on previous occasions, dressed in mourning.

At ten o'clock Mr. Justice Abbott took his seat on the bench; and, after disposing of some motions of course, the remainder of the judges entered.

The appellant had previously taken his place on the floor of the Court, near the students' box, and was in communication with his solicitor, Mr. Bedford.

The Court immediately proceeded to the business of the appeal.

Lord Ellenborough.—Call the prisoner.

Mr. Reader.—My Lord, he is in attendance upon the Court.

Lord Ellenborough.—Call the appellant.

Mr. Clarke.—The appellant is preparing to put in his counter-plea.

ord Ellenborough.—On affidavit?

Reader.—On affidavit.

r. Gurney.—The appellant is a
sman, and a gentleman is attesting
mark.

The counter-plea was here handed in
the appellant.

Mr. Le Blanc, Chief Clerk.—These are
your counter-plea and affidavit.

Appellant.—Yes.

Mr. Le Blanc.—Are the contents of
your affidavit true?

Appellant.—Yes.

Mr. Reader.—The Master will be
good enough to read the counter-plea
slowly.

Mr. Le Blanc then read the counter-
plea, of which the following is a verba-
tim and literal transcript:—

COUNTER-PLEA.

“ WILLIAM ASHFORD V. ABRAHAM
THORNTON.

*In the King's Bench.—Saturday next
after eight days of Saint Martin
in Michaelmas Term, in the 58th
year of George III.*

“ And the said Wm. Ashford saith,
that the said Abraham Thornton
ought not to be admitted to wage
battle in this appeal with him the
said William Ashford, because he
saith, that, before and at the time of
the issuing of the writ of appeal of
him the said William Ashford in this
suit, there were, and still are, the vio-
lent and strong presumptions and
proofs following, that he the said
Abraham Thornton, was and is guilty
of the felony and murder aforesaid in
the said count so charged and alleged
against him the said Abraham Thorn-
ton as aforesaid, to wit, at the parish
of Sutton Coldfield, in the county of
Warwick; that is to say—

“ That on the twenty-seventh day of
May, in the 57th year of the reign of
our Sovereign Lord George the Third,
by the grace of God of the United
Kingdom of Great Britain and Ire-
land, King, Defender of the Faith,
about the hour of seven in the morn-
ing of the same day, the body of the
said Mary Ashford, in the said writ
of appeal and count mentioned was

found dead in a pit of water, situate
in the parish of Sutton Coldfield
aforesaid, in the county of Warwick
aforesaid; and that the said body
of the said Mary Ashford was then
and there taken out of the said pit,
and examined in the presence of
divers credible witnesses in this be-
half.

“ And the said William Ashford fur-
ther saith, that, upon and from the
said examination of the said body of
the said Mary Ashford, it then and
there appeared, and was manifest to
the said witnesses, that she, the said
Mary Ashford, was and had been re-
cently alive, and that she, the said
Mary Ashford, had come to her death
by drowning, as in and by the said
count is charged and alleged; and
that recently before the death of her,
the said Mary Ashford, some man
had forcibly violated her person; and
that up to the time of such deed Mary
Ashford had been and was a virgin:
and that upon the said examination
there also then and there appeared
and were manifest upon each of the
arms of her the said Mary Ashford,
between the shoulder and the elbow
of each of the said arms, the mark
and impression of a human hand, the
said marks and impressions then and
there denoting and indicating that
each of the arms of her, the said
Mary Ashford, had been recently
grasped and held with violence.

“ And the said William Ashford
further saith, that, on the said exami-
nation of the body of the said Mary
Ashford, there appeared and were
marks of blood [The evidence of the
appearance of the unfortunate girl's
body and clothes, here introduced,
and which proved decisively that she
had been violated, is too indelicate to
meet the public eye] and also upon
the clothes and dress in which the
body of the said Mary Ashford was
clothed when the same was so taken
out of the said pit as aforesaid; and
that the front part of the dress
wherein the body of the said Mary

Ashford was then clothed, was then and there rent and torn, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid.

“ And the said William Ashford further saith, that on the said 27th day of May, in the 57th year aforesaid, in the parish of Sutton Coldfield aforesaid, in the said county of Warwick, about the hour last aforesaid, upon certain grass then and there growing, about the distance of forty yards from the said pit, there was the mark and impression of a human figure, from which said mark and impression it then and there appeared, and was manifest, that a human body had been recently lying there with the legs extended; and on the grass near the place, and particularly on the ground near the lower part of the said impression, a quantity of blood was seen; and near the said pit divers other marks and vestiges of blood were apparent. And that the said last-mentioned marks, spots, &c. upon the said clover grass, then and there growing by the side of the said footpath as aforesaid, were near enough to the said footpath to have fallen from a human body carried in the arms of a person passing along the said footpath from the place where the said mark and impression of the said human figure was towards the said pit; and that there was not, at the time when the said body of the said Mary Ashford was so found in the said pit as aforesaid, any impression, mark, or vestige in the said clover grass, whereon the said last-mentioned marks and spots were by the side of the said footpath as aforesaid, of any footstep, or of any person having walked or passed on or over the said clover grass, and the said clover grass was then covered with dew, and the same dew was not disturbed or brushed away.

“ And the said William Ashford further saith, that in the evening of the 26th day of May, in the 57th

year aforesaid, the said Mary Ashford was at a dance, at the house of on Daniel Clarke, in the parish of Curdworth, in the said county of Warwick, and that the said Abraham Thornton was then there also; and that while the said Mary Ashford so was at the said house of the said Daniel Clarke, to wit, on the said 26th day of May in the fifty-seventh year aforesaid, at the parish of Curdworth aforesaid, in the said county of Warwick, he, the said Abraham Thornton, said, of and concerning the said Mary Ashford, in the presence and hearing of one Joseph Cooke, then and there, and still being a credible witness, but not in the hearing of the said Mary Ashford, in gross and obscene language to the effect following: that is to say, ‘ That he the said Abraham Thornton had had carnal knowledge of the sister of the said Mary Ashford three times, and he would have carnal knowledge of her, the said Mary Ashford, or he would die for it.’

“ And the said William Ashford further saith, that the said Mary Ashford and the said Abraham Thornton danced together at the house of the said Daniel Clarke, on the evening of the said 26th day of May, in the 57th year aforesaid; that about twelve o'clock at night of the same 26th day of May, at the parish of Curdworth aforesaid, in the said county of Warwick, the said Mary Ashford and Abraham Thornton left the said house of the said Daniel Clarke, and walked together towards Erdington, in the parish of Aston, near Birmingham, in the said county of Warwick.

“ And the said William Ashford further saith, that about three o'clock in the morning of the said 27th day of May, in the 57th year aforesaid, the said Mary Ashford and Abraham Thornton were seen talking together at a certain stile, near to a certain lane, called Bell Lane, leading towards Erdington aforesaid, to wit, at the parish of Sutton Coldfield aforesaid.

aid, in the county of Warwick aforesaid.

And the said William Ashford further saith, that about four o'clock of the same morning, of the said 27th day of May, in the 57th year aforesaid, the said Mary Ashford went to the house of a certain person, to wit, one Mary Butler, in Erdington aforesaid, at which said last-mentioned house she, the said Mary Ashford, had on the ther preceding day left some wearing apparel; and that the said Mary Ashford then and there remained in the said last-mentioned house about a quarter of an hour; and that during that time she, the said Mary Ashford, then and there appeared in good health, and in perfect composure of mind.

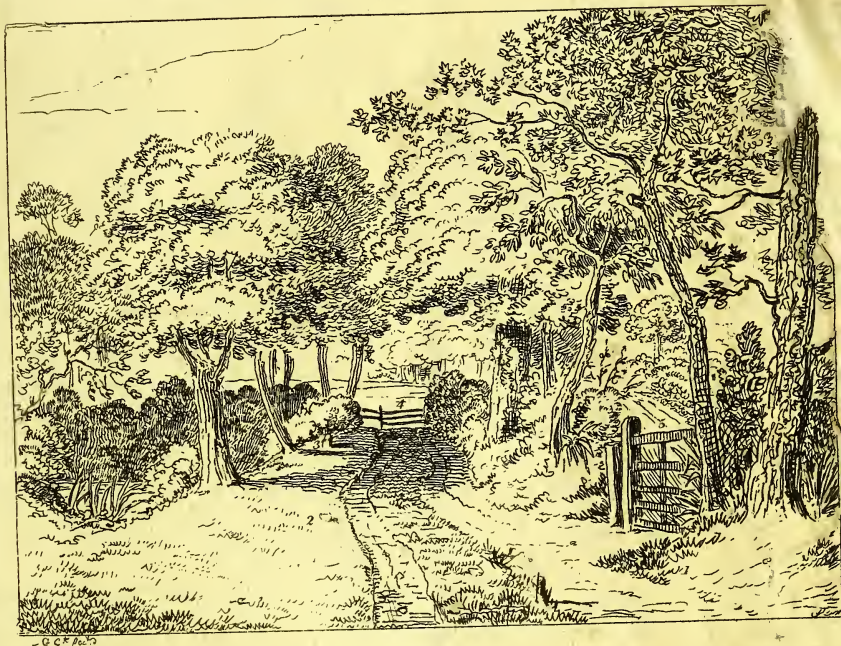
" And the said William Ashford further saith, that the said Mary Ashford, at the end of the said last-mentioned time, to wit, on the said 27th day of May, in the 57th year aforesaid, left the said last-mentioned house, to wit, at the parish of Aston, near Birmingham aforesaid, in the county of Warwick aforesaid.

" And the said William Ashford further saith, that very soon, that is to say, within the space of a quarter of an hour after the said Mary Ashford so left the said last-mentioned house as aforesaid, she, the said Mary Ashford, was seen, to wit, at the parish of Aston, near Birmingham aforesaid, in the county of Warwick, walking alone, in a direction leading from Erdington aforesaid towards Langley, in the said parish of Sutton Coldfield, in the county of Warwick aforesaid; which said Langley was then the place of residence of her the said Mary Ashford.

" And the said William Ashford further saith, that before and on the said 27th day of May, in the 57th year aforesaid, there was a certain public footway leading out of Bell Lane aforesaid, and that one of the said closes, a short time before the said 27th day of May aforesaid, in

the 57th year aforesaid, had been harrowed, and then was newly harrowed, and which said last-mentioned close was and is next adjoining to the close in which was and is situate the said pit wherein the body of the said Mary Ashford was so found as aforesaid, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid.

" And the said William Ashford further saith, that on the said 28th day of May, in the 57th year aforesaid, in the morning of that day, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid, there appeared and were manifest in the said harrowed field, in and upon the newly harrowed ground there, the recent marks and impressions of the footsteps of the said Abraham Thornton, and of the footsteps of the said Mary Ashford, the same having been then and there carefully examined and compared by divers credible witnesses with the shoes worn by the said Abraham Thornton and the said Mary Ashford respectively, on the morning of the same 27th day of May; and that it then and there appeared, and was manifest, from the said marks and impressions of the said footsteps, to the said credible witnesses, who then and there examined and compared the same as aforesaid, that she, the said Mary Ashford, had run and endeavoured to escape from him the said Abraham Thornton, and that he, the said Abraham Thornton, had run after and pursued her, the said Mary Ashford, and had overtaken her in the said harrowed field; and it also, then and there appeared and was manifest to the same credible witnesses, from the said marks and impressions of the said footsteps, that from that part of the said harrowed field where he, the said Abraham Thornton, had so overtaken the said Mary Ashford as aforesaid, they, the said Abraham Thornton and Mary Ashford, had walked together



A CORRECT
VIEW OF THE SPOT

Where the unfortunate Mary Ashford was ravished and murdered.

1. The Spot where the Rape was committed, and where was seen the impression of a human figure extended.
2. Here it appeared that the body was put down, as there was a considerable quantity of blood near the place. A track of blood was discovered from No. 1. to No. 2.
3. From this spot it is supposed the body was thrown into the pit. From No. 2. towards the edge of the pit, drops of blood were seen.
4. Stile leading into the harrowed field, near to which it is imagined the Murderer lay in wait for the unfortunate Girl.
5. Gate leading to Penn's Mill.



in a direction leading towards the said pit, where the body of the said Mary Ashford was so found as aforesaid, and also towards the spot where the said mark and impression of a human figure appeared on the grass as aforesaid, until the said marks and impressions of the said footsteps approached and came within the distance of about forty yards from the said pit, at which said distance from the said pit the said marks and impressions of the said footsteps were lost, and could no longer be traced, by reason of the hardness of the ground there.

“ And the said William Ashford further says, that there also then and there appeared and were manifest on the said harrowed field, in and upon the said harrowed ground there, the recent marks and impressions of the footsteps of the said William Thornton; from which said last-mentioned marks and impressions, it then and there appeared and was manifest to the same last-mentioned credible witnesses, who then and there carefully examined and compared the said last-mentioned footsteps with the shoes so worn by the said Abraham Thornton as aforesaid, that he, the said Abraham Thornton, had then recently run by himself along the said harrowed field, in a direction leading from the said pit, to wit, at the parish of Sutton Coldfield, in the county of Warwick aforesaid. And the said William Ashford further says, that no other marks or impressions of any footsteps of her the said Mary Ashford were then and there found or visible, except as aforesaid.

“ And the said William Ashford further says, that on the morning of the said 27th day of May, in the 57th year aforesaid, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid, there was visible and manifest, on certain grass then and there growing very near to the edge of the bank of the

said pit, and near to that part of the said pit in which the body of the said Mary Ashford was found drowned as aforesaid, the mark and impression of the shoe of a man's left foot. And the said William Ashford saith, that on the same morning the said Abraham Thornton had on and wore shoes made and fitted for his right and left feet respectively, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid.

“ And the said William Ashford further saith, that on the morning of the said 27th day of May, in the 57th year aforesaid, at the parish of Sutton Coldfield aforesaid, in the said county of Warwick, the said Abraham Thornton was searched and stripped in the presence of divers credible witnesses, and that the shirt and inside of the clothes of the said Abraham Thornton was then and there marked and stained with blood; and that on the same being discovered to be so stained, the said Abraham Thornton then and there declared, that on the then preceding night he had had knowledge of the said Mary Ashford, by her own consent. And this he the said William Ashford is ready to verify, when, where, and in such manner as the Court here shall direct and award.

“ Wherefore he prays judgment, and that the said Abraham Thornton may not be admitted to wage battle in this appeal against him the said William Ashford.”

The affidavit of the appellant was then read:—

“ *In the King's Bench.*—William Ashford, late of Erdington, but now of Hill, in the parish of Sutton Coldfield, in the county of Warwick, labourer, maketh oath and saith, that the counter-plea hereto annexed is true in substance and matter of fact, as he verily believes.

“ WILLIAM ASHFORD,
His X mark.”

Mr. Reader.—I am quite sure the Court will not expect of me, on the part of this defendant, to give an immediate answer to the plea you have just heard read. My humble application to your Lordships is for time to consider of the answer I shall give.

Lord Ellenborough.—What time do you desire?

Mr. Reader.—I think there can be no prospect whatever of this case coming to issue in the course of the present term; and as this is a case of very rare occurrence, and of infinite importance to the individual and the public, I am anxious to have as much time granted me to consider the subject as I can have; therefore, my application is, that your Lordships will give me time until the second day of next term. I ought to add, that it may be necessary for me to have the record of the acquittal on the indictment; because a great part of what you have heard—my learned friend says all; I will not say it is precisely so, but a great part, infinitely the greater—did undoubtedly appear at the trial.

Mr. Clarke.—We can hear nothing about the trial.

Mr. Reader.—It may be necessary for me to have the record of the trial; and therefore it is, that under all the circumstances I wish to have time allowed me. I do not put the parties in a different situation; for it would be next to impossible to come to a final result during the present term. I am therefore anxious to have as much time as possible.

Lord Ellenborough.—I think it appears from your statement, that it may be necessary for you to resort to the record; and as the term is so far advanced as to render it difficult for you to come to a convenient issue on the subject in the course of the term, and as, if it goes over this term, the proceedings in this Court in the next term will only be *ore tenus*, there can be no objection. But I wish to know what Mr. Clarke, on behalf of the appellant, has to say.

Mr. Clarke.—We leave it to the Court to act as it shall think fit.

Lord Ellenborough.—We would allow a shorter time, if the term was not so far advanced; but as the term expires on Friday—

Mr. Clarke.—We leave it entirely to the Court.

Lord Ellenborough.—They must have an order from the judge to have a copy of the record of acquittal; they would have to send down for the record, and then they would require some convenient time to consider of the replication; therefore, finding it impossible, in point of justice, to enforce a replication this term, it necessarily throws it into the following term.

Mr. Clarke.—I leave it entirely to the Court.

Mr. Reader.—If it had not been for the consideration that the term is so nearly closed, I should have felt anxious that the proceeding should have been brought to a conclusion this term; but, believing it impossible, I am obliged to make the present application.

Lord Ellenborough.—Well, then, time is given to reply till the second day of next term.

The prisoner was now withdrawn from the bar, and was, with much difficulty, conducted by the officers to the carriage which awaited to carry him back to prison. Nothing could exceed the anxiety expressed by the crowd to know the result of the proceedings; and upon learning the delay which was about to take place before the ultimate decision can be known, much disappointment was expressed.

Parliament Street and Palace Yard, from the immense multitude assembled, exhibited the appearance of persons retiring from a public meeting upon some important occasion.

Although the youthful appearance of the appellant led every person to suppose that he was still a minor, we understand he is two and twenty years of age.

The novelty of this proceeding, and the peculiar circumstances of the case itself, occasioned some difficulty to the pleaders in framing the counter-plea. The professional gentlemen were; we understand, occupied the whole of Thursday night in drawing the plea, which, after a consultation on Friday night, was not engrossed until very early on Saturday morning.

Thornton's Second Trial.

FAIRBURN'S EDITION.

No. 3.

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The Appellee's Replication to the Counter-plea of the Appellor.

The prisoner Thornton has remained ever since his last commitment in close confinement in the King's Bench prison. He occupies a room which is appropriated for the reception of state prisoners, and which is detached from that part of the prison devoted to the debtors. He is allowed one hour every morning to walk in the yard; and during these opportunities he conducts himself with great levity, appearing perfectly unconscious of the odious situation in which he stands. In the remaining part of the day he occasionally shews himself at the window of his apartment, and amuses himself with calling to and conversing with those to whom his imprisonment has introduced him. There is no restriction as to his visitors, many of whom have been admitted at the hours appointed by the regulations of the prison. One of his cousins from the country has had frequent interviews with him lately. The expence of his table is defrayed by himself; he lives well, but on plain food. He has had frequent remittances from the country.

The father of the prisoner is steward to Lord Bradford, and is stated to be a man of some property. He is well known in the neighbourhood of Warwick, and much respected. The profligate conduct of his son, however, in more instances than one, has tended to embitter his life, and has also exposed him to heavy pecuniary charges.

COURT OF KING'S BENCH, WESTMINSTER,

Saturday, Jan. 24, 1818.

This being the day appointed by the Court to receive the replication of the appellee to the counter-plea of the appellor, public curiosity was again excited

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in an extraordinary degree, and at a very early hour persons were collected in great numbers in the avenues leading to the court, hoping either to be gratified by a transient view of the prisoner, or to gain admission to the court itself. Many, however, were doomed to disappointment, as on the former occasions, and but a comparatively small portion of the collected crowd were successful in their efforts.

A few minutes before nine, the prisoner was brought into court, in the custody of Mr. Gibbons the tipstaff, and the gaoler. He was brought in a hackney-coach from the prison, and seemed to be perfectly confident of a successful issue to the proceedings. He was dressed in a plain suit of black, and his general appearance was very respectable.

A few minutes before ten the appellor, William Ashford, came into court, and took his seat under the King's Counsel.

About a quarter after ten, Mr. Clarke, Mr. Richardson, and Mr. Chitty, counsel for the appellor, and Mr. Reader, and Mr. Reynolds, counsel for the appellee, took their places; and presently afterwards Lord Ellenborough, Mr. Justice Bayley, Mr. Justice Abbott, and Mr. Justice Holroyd, took their seats.

Lord Ellenborough immediately called upon Mr. Clarke.

Mr. Clarke.—My Lord, I attend here as counsel for the appellor, William Ashford, who was ordered by the Court, last term, to attend your Lordships this day, to hear the replication of Abraham Thornton, the appellee, to his counter-plea.

Mr. Reader.—I also appear, my Lord, as counsel for the *defendant*, who is ready to deliver in his replication to the counter-plea now on the files of the Court.

Mr. Clarke.—I believe the proper description of your client is—the *appellee*.

Mr. Reader.—I am told I should have

said that I appear on the part of the appellee. Be it so. I attend here on the part of the appellee, who is ready with his replication; and he is also ready to verify by affidavit the facts therein stated.

The appellee then stood up; and the Testament being handed to him, he swore that the contents of his replication were true; and the affidavit thereof being annexed to the counter-plea, which was also signed by the appellor, the replication was handed to Mr. Le Blanc, Master of the Pleas' side, who read as follows:

REPLICATION TO THE COUNTER-PLEA.

“ ABRAHAM THORNTON AT THE SUIT OF WILLIAM ASHFORD.

“ *In the King's Bench.—Saturday next after eight days of Saint Hilary, in the 58th year, &c.*

“ And the said Abraham Thornton saith, that he the said Abraham Thornton, notwithstanding any thing by the said William Ashford in the said counter-plea alleged, ought to be admitted to wage battle in this appeal with him the said William Ashford; because, protesting that the said counter-plea is insufficient, and that he the said Abraham Thornton is not under any necessity, or in anywise bound by the law of the land, to answer the same; nevertheless, for replication to the said counter-plea in this behalf, the said Abraham Thornton saith, that, before and at the time of the issuing of the writ of appeal of him the said William Ashford, in this suit, there were and still are the violent and strong presumptions and proofs following, that he the said Abraham Thornton was not and is not guilty of the felony and murder aforesaid, in the said writ of appeal and count charged and alleged against him; that is to say,

“ That at the time when the said Mary Ashford went to the house of the said Mary Butler, in Erdington aforesaid, in the morning of the said Tuesday the 27th day of May, as in

the counter-plea of the said William Ashford is above set forth, she, the said Mary Ashford, went there alone and unaccompanied by the said Abraham Thornton. And the said Abraham Thornton further says, that the said Mary Ashford left the house of the said Mary Butler at about one quarter of an hour past four of the clock on the said morning, alone and unaccompanied by the said Abraham Thornton, and proceeded in a direction towards Langley aforesaid, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further says, that a short time after the said Mary Ashford had so left the house of the said Mary Butler, she was met at a short distance from the same, walking alone, in a direction leading from Erdington aforesaid towards Langley aforesaid, by one Joseph Dawson, who then and there saw her in Bell Lane, in the said counter-plea mentioned, and proceeding therein towards Langley aforesaid; he, the said Abraham Thornton, not being in company with the said Mary Ashford, nor anywhere within sight, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid.

“ And the said Abraham Thornton further says, that within a short time afterwards, that is to say, within the space of a quarter of an hour from the time she so left the house of the said Mary Butler, the said Mary Ashford was seen by one Thomas Broadhurst crossing the turnpike-road leading from London to Chester, in that part of the same which passes across Bell Lane, and that the said Mary Ashford continued her course along the said lane, called Bell Lane, towards Langley aforesaid; she, the said Mary Ashford, then also being alone, and unaccompanied by the said Abraham Thornton, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further says, that, at the said several places where the said Mary Ashford was so, as aforesaid, seen by the said Joseph Dawson and the said Thomas Broadhurst, the said *road was broad and straight for a considerable distance, and that he, the said Abraham Thornton, might then and there have been seen at a considerable distance, if he had been proceeding in the same direction with the said Mary Ashford, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.*

“ And the said Abraham Thornton further says, that on the morning of the said Tuesday the 27th day of May, at *half-past four*, or not later than *twenty-five minutes before five* of the clock of the said morning, *he, the said Abraham Thornton, was seen by divers credible witnesses, that is to say, by one William Jennings, one Martha Jennings, one Jane Heaton, and one John Holden the younger, (being all of them persons with whom he, the said Abraham Thornton, had no previous connexion or acquaintance), whilst he, the said Abraham Thornton, was walking along a lane leading from Erdington aforesaid to Castle Bromwich aforesaid, close to the farm-house of one John Holden the elder, which was the direct way from Erdington aforesaid towards the house of the said Abraham Thornton's father, with whom he, the said Abraham Thornton, then resided, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid; and that he, the said Abraham Thornton, was then walking very slowly, leisurely, and composedly, along the said lane, and did not appear to any of the said persons last mentioned to be in any degree of confusion or disorder.*

“ And the said Abraham Thornton further saith, that when he had continued his course about a mile from the farm-house of the said John Holden the elder, *he was seen by one John*

Heydon, still slowly walking in a certain foot-path, in the same direction from Erdington aforesaid towards Castle Bromwich aforesaid, and that the time he was so seen by the said John Haydon was about ten minutes before five o'clock of the same morning; and the said Abraham Thornton says, that he was very well acquainted with the said John Haydon, and that he then and there stopped and conversed with the said John Haydon for the space of a quarter of an hour, after which he, the said Abraham Thornton, parted from him, and continued walking on towards the house of his, the said Abraham Thornton's, father, near Castle Bromwich aforesaid.

“ And the said Abraham Thornton further saith, that one *John Woodcock saw him, the said Abraham Thornton, and the said John Haydon, so stopping and conversing together as last aforesaid, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid.*

“ And the said Abraham Thornton further saith, that he, the said Abraham Thornton, *was afterwards seen by one James White in Castle Bromwich aforesaid, at about twenty-five minutes past five of the clock of the same morning, when he, the said Abraham Thornton, was still walking slowly and leisurely in a direction towards his father's house, which was about half a mile distant from Castle Bromwich aforesaid, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.*

“ And the said Abraham Thornton further saith, that *the distance from the house of the said Mary Butler, along the said lane called Bell Lane, and over and across the said harrowed field in the said counter-plea mentioned, to the pit of water wherein the body of the said Mary Ashford was found, is 1 mile, 2 furlongs, and 30 yards; and that the distance from the Workhouse, being the nearest point of the village of Erdington to*

the said farm-house of the said John Holden the elder, along the said lane and footpath leading from Erdington aforesaid to *Castle Bromwich* aforesaid, is 1 mile, 3 furlongs, and 62 yards; and that the distance from the said pit of water, round by Erdington aforesaid, to the said house of the said John Holden the elder, is 2 miles, 4 furlongs, at the least, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further saith, that *the most ready and accessible way* from the said pit of water to the said farm-house of the said John Holden the elder, and also *the shortest way*, with the exception of that hereinafter next mentioned, and also the way which could be gone over in the shortest possible time by any person travelling the same on foot, was and is the way following; that is to say, from the said pit of water across certain closes into a certain turnpike road called the Chester road, at a part thereof near to the garden-wall of one Mr. Hipkins, and so across the said road into, over, and across certain other inclosures, into and along a certain lane leading by the house of one Mr. Laughner, and so along a certain other lane unto the said farm-house of the said John Holden the elder; and that the distance of the said pit of water from the said last-mentioned farm-house, measured in the direction of the said last mentioned way, is not less than 1 mile, 7 furlongs, and 170 yards, to wit, in the parish of Sutton Coldfield aforesaid.

“ And the said Abraham Thornton further saith, that *the distance* from the said pit of water in a straight line to the said farm-house of the said John Holden the elder, is not less than 1 mile, 4 furlongs, and 60 yards; but the said Abraham Thornton saith, that there is no footpath or other way in the direction last-mentioned, except for the distance of about 100 yards,

being from the bridge across the said canal to the said farm-house; and that, from the intersections of the hedges and fences of the several inclosures lying between the said pit of water and the said bridge, and the difficulties of the ground, it would require a longer time to arrive at the said farm-house by the said last-mentioned course, than by taking the more circuitous and accessible course secondly above pointed out, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further saith, that *the clock at the house of the said Mary Butler*, by which the time of the departure of the said Mary Ashford from the said last-mentioned house is fixed and ascertained, was, on the morning of the said 27th day of May, and before any alteration was made in the time marked by the said clock, carefully compared by one William Webster, Esq. a person then wholly unknown to the said Abraham Thornton, and one of the witnesses called by the prosecutors upon the trial of the indictment hereinafter next mentioned, with the true time then kept at Birmingham; and that the clock at the farm-house of the said John Holden the elder, by which the time of the arrival of the said Abraham Thornton close to that farm-house is ascertained, was also on the morning of the 28th day of May, and before any alteration was made in the time marked by the same, carefully compared by one Wm. Twamley, a person wholly unconnected with the said Abraham Thornton, with the same true time so kept at Birmingham as aforesaid: and that the several times hereinafter stated, that is to say, the time of one quarter of an hour past four o'clock, at which the said Mary Ashford left the house of the said Mary Butler, and the time of half an hour past four of the clock, or 25 minutes before five of the clock, at which the said Abraham Thornton

was close to the said farm-house of the said John Holden the elder, and also the said several other times hereinbefore mentioned, are all *corrected and reduced to the same measure of time*, that is to say, the true time so kept at Birmingham on that day, and are herebefore stated accordingly, to wit, at the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid.

“ And the said Abraham Thornton further saith, that upon his arrival at his father’s house, near Castle Bromwich aforesaid, on the morning of the said 27th day of May, *he changed his hat and coat* which he had worn during the preceding night, and *no other part* of his wearing apparel; but that he still had on and *wore the same shirt and breeches, and the same stockings and shoes*, which he had worn during the preceding night; and that he had on and wore the same respectively at the time he was apprehended upon the said charge of the said felony and murder, that is to say, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further saith, that on such his apprehension upon the charge of having been guilty of the said felony and murder of the said Mary Ashford as aforesaid, *he was taken before one William Bedford, Esq.* one of his Majesty’s Justices of the Peace for the county of Warwick, before whom the several witnesses were examined in support of the said charge; and that he, the said Abraham Thornton, being also examined, did upon that occasion *give in his examination*, which was afterwards reduced into writing, and signed by him the said Abraham Thornton; in which examination he, the said Abraham Thornton, *gave an account of the several places at which he had been* during the night of the 26th and the morning of the 27th of May, and the *several times* at which he had been at such places respectively, and described the *several per-*

sons whom he met and saw during such night and morning.

“ And the said Abraham Thornton further says, there is no fact *stated by him*, the said Abraham Thornton, upon such his examination as aforesaid, which *hath been in any manner contradicted* by any evidence which was then given, or hath been subsequently given; but that, on the contrary thereof, many of the said facts, and *all the material facts* stated in the said examination, *have since been fully confirmed and corroborated* by various witnesses, as well those called in support of the prosecution of the indictment hereinafter next mentioned as those called on the part of the said Abraham Thornton in his defence thereto, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further saith, that at the *General Sessions of Oyer and Terminer* of our Sovereign Lord the King, holden at Warwick, in and for the county of Warwick, on Saturday the 2d day of August, in the 57th year of the reign of our said Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, before the Honourable Sir John Bayley, Knight, one of the Justices of our said Lord the King, assigned to hold pleas before the King himself, and the Honourable Sir George Sowerley Holroyd, Knight, one other of the Justices of our said Lord the King of the same Court, and others their fellows, Justices of our said Lord the King, assigned by letters patent of our said Lord the King, under the great seal of Great Britain, to them and others and any two or more of them made, of whom our said Lord the King would have the said Sir John Bayley and Sir George Sowerly Holroyd, among others therein named, to be one to inquire more fully the truth, by the oath of good and lawful men of the

county aforesaid, and by other ways, means, and methods, by which they should or might better know, as well within liberties as without, by whom the truth of the matters might be better known and inquired into, of all treasons, misprision of treasons, insurrections, rebellions, counterfeitings, clippings, washings, false coinings, and other falsities of the money of Great Britain, and of all other kingdoms and dominions whatsoever; and of all murders, felonies, man-slaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, assemblies, unlawful uttering of words, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligencies, concealments, maintenances, oppressions, champerties, deceits, and all other evil doings, offences, and injuries whatsoever; and also of the accessories of them, within the counties aforesaid, as well within liberties as without, by whomsoever, and in what manner soever, done, committed, or perpetrated, and by whom, or to whom, when, how, and after what manner; and of all other articles and circumstances concerning the premises, and every or any of them, in any manner whatsoever; and the said treasons, and other the premises, according to the laws and customs of England, for this time to hear and determine, by the oath of Sir C. Mordaunt, Bart. Dugdale Stratford Dugdale, Charles Mills, Wriothesley Digby, Abraham Grimes, William Holbeck, Charles Gregory Wade, William Hamper, Charles Porter Packwood, Matthew Wise, John Boulton, Henry Cadwalader Adams, James Beck, William Harding, John Eardley, Eardley Wilmot, Samuel Edward Steward, James Woolley, Francis Baynon Hacket, Joseph Boulton the younger, Robert Middleton, attorney, William Staunton, and William Bedford, Esqrs. good and lawful men of the said county of Warwick, then and there

sworn and charged to inquire, for our said Lord the King, for the body of the said county, *the said Abraham Thornton*, by the name of Abraham Thornton, late of the parish of Aston, near Birmingham, in the county of Warwick, labourer, *was indicted for the murder of the said Mary Ashford; which indictment follows in these words:—* ‘*Warwickshire to wit: The Jurors of our Lord the King, upon their oath, present, that Abraham Thornton, late of the parish of Aston, near Birmingham, in the county of Warwick, labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the 27th day of May, in the 57th year of the reign of our Sovereign Lord George III. by the grace of God of the united kingdom of Great Britain and Ireland King, Defender of the Faith, with force and arms, at the parish of Sutton Coldfield, in the county of Warwick aforesaid, in and upon one Mary Ashford, spinster, in the peace of God and of our said Lord the King then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Abraham Thornton then and there feloniously, wilfully, and of his malice aforethought, did take the said Mary Ashford into both his hands, and did then and there feloniously, wilfully, violently, and of his malice aforethought, cast, throw, and push the said Mary Ashford into a certain pit of water, wherein there then was a great quantity of water, situate in the parish of Sutton Coldfield aforesaid, in the county aforesaid, by means of which said casting, throwing, and pushing the said Mary Ashford into the pit of water aforesaid, by the said Abraham Thornton, in form aforesaid, she the said Mary Ashford, in the pit of water aforesaid, with the water aforesaid, was then and there choaked, suffocated, and drowned, of which said choaking, suffocating, and drowning, she the said Mary Ashford then and there instantly died; and so the Jury aforesaid, upon their oath aforesaid, do*

say, that the said Abraham Thornton, her the said Mary Ashford, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of our said Lord the King, his crown, and dignity.' Whereupon the sheriff of the said county of Warwick was commanded that he omitted not, by reason of any liberty in his bailiwick, but that he should enter the same, and take the said Abraham Thornton, and him safely keep, to answer the felony and murder aforesaid, whereof he stood indicted. Which said indictment the said justices afterwards, to wit, at the delivery of the gaol of our said Lord the King of the said county of Warwick, holden at Warwick, in and for the said county of Warwick, on the first Saturday, the 2d day of August, in the said 57th year of the reign of our said Lord the King, before the Justices of our said Lord the King above-named, and others their fellows aforesaid, Justices of our said Lord the King, assigned to deliver his said gaol of the said county of Warwick, of the prisoners therein, being by their proper hands, did deliver there, in Court of Record, the said indictment to be determined in due form of law; and afterwards, to wit, at the same delivery of the gaol of the said Lord the King of the county aforesaid, on the said 2d day of August, in the 57th year aforesaid, before the said Justices, and others their fellows aforesaid, there came the said Abraham Thornton, under the custody of the Honourable Henry Verney, sheriff of the county aforesaid, in whose custody in the gaol of the county aforesaid, for the cause aforesaid, he had been before committed, being brought to the bar there in his proper person by the said sheriff, to whom he was there also committed, and forthwith being demanded concerning the premises in the said indictment above specified and charged upon him, how he would acquit himself thereof, he said that he was not guilty thereof,

and thereof, for good and evil, he put himself upon the country: and Richard Lowndes, Esq. clerk of the assizes for the county aforesaid, who prosecuted for our said Lord the King, by John Frederick Hilditch, Gent. his deputy, for that purpose lawfully constituted and appointed, did the like: therefore it was awarded that a Jury should thereupon immediately come before the said Justices of the Lord the King above-named, and others their fellows aforesaid, of good and lawful men of the said county, by whom the truth of the matter might be the better known, and who were not of kin to the said Abraham Thornton; to recognize upon their oath whether he was guilty of the felony and murder in the indictment aforesaid above specified, or not; because as well the said Richard Lowndes, Esq. who prosecuted as aforesaid in that behalf, as the said Abraham Thornton, had put themselves upon the said Jury. And the Jurors of the said Jury, by the said sheriff for that purpose impanelled, returned, to wit, Joseph Johnson, John Crook, George Hughes, Thomas Pope, John Allibone, William Bennett, John Harrison, George Tandy, John Tibbetts, Joseph Burge, Isaac Green, Thomas Johns, being called came, who being elected, tried, and sworn, to speak the truth of and concerning the premises upon their oath, said that the said Abraham Thornton was not guilty of the felony and murder in the indictment aforesaid above specified in manner and form, as he had for himself above by his plea alleged, nor had he withdrawn himself upon that accusation; upon which it was considered by the Court there, that the said Abraham Thornton, of the premises aforesaid, in the indictment aforesaid above specified, should be discharged and go thereon without delay (as by the said record of acquittal may more fully appear.)

"And the said Abraham Thornton further saith, that he, the said

Abraham Thornton in the said writ of appeal and the count mentioned, and the said Abraham Thornton in the said indictment above-mentioned, are *the same person*, and not other or different; and that the said Mary Ashford in the said writ of appeal and count mentioned, and of whose death the said Abraham Thornton is appealed, and the said Mary Ashford in the said indictment above-mentioned, are *the same person*, and not other or different; and that the said taking the said Mary Ashford, and casting, throwing, and pushing the said Mary Ashford into the said pit of water, by means of which said casting, throwing, and pushing of the said Mary Ashford into the said pit of water, she, the said Mary Ashford, is supposed to have been choaked, suffocated, and drowned, in the said appeal mentioned, and the said count of the said appeal mentioned, and the said taking the said Mary Ashford, and casting, throwing, and pushing the said Mary Ashford into the said pit of water, by means of which said casting, throwing, and pushing of the said Mary Ashford into the said pit of water, she, the said Mary Ashford, is supposed to have been choaked, suffocated, and drowned, in the said indictment mentioned, are the *same* casting, throwing, and pushing of the said Mary Ashford into the said pit of water, choaking, suffocating, and drowning, and not other or different, to wit, at the parish of Sutton Coldfield aforesaid, in the county aforesaid.

“ And the said Abraham Thornton further saith, that *the several facts and circumstances, and the said presumptions and proofs*, in the said *counter-plea* mentioned, and thereby supposed to be violent and strong pre-

sumptions and proofs, that he, the said Abraham Thornton, was and is guilty of the felony and murder aforesaid, in the said count so charged and alleged against him the said Abraham Thornton as aforesaid, and also the said several facts and circumstances in this replevin mentioned, *were in substance and effect proved upon oath before the Court and Jury at the said trial* of the said indictment against the said Abraham Thornton for the murder of the said Mary Ashford.

“ And the said Abraham Thornton further saith, that heretofore, to wit, at the *General Session of Oyer and Terminer* of our Sovereign Lord the King, holden at Warwick, in and for the county of Warwick, on *Saturday the 2d day of August*, in the 57th year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, before the Honourable Sir John Bayley Knight, one of the Justices of our said Lord the King, assigned to hold pleas before the King himself, the Honourable Sir George Sowerly Holroyd, Knight, one other of the Justices of our said Lord the King of the same county, and others their fellows, Justices of our said Lord the King, assigned by letters patent of our said Lord the King, under the great seal of Great Britain, to them and others and any two or more of them made, of whom our said Lord the King would have the said Sir John Bayley and Sir George Sowerly Holroyd, among others therein named, to be one to inquire more fully the truth, by the oath of good and lawful men of the county aforesaid, and by other ways, means, and methods, by which

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FAIRBURN'S EDITION.

No. 4.

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Replication to the Counter-plea concluded—Rejoinder of the Appellor—Joinder in demurrer of the Appellee—Description of a judicial combat, or wager of battle, in 1571.

they should, or might the better know, as well within liberties as without, by whom the truth of the matter might be better known and inquired into, of all treasons, misprisions of treasons, insurrections, rebellions, counterfeittings, clippings, wastings, false coinings, and other falsities of the money of Great Britain, and of all other kingdoms and dominions whatsoever; and of all murders, felonies, manslaughterers, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligencies, concealments, maintenances, oppressions, champerties, deceits, and all other evil doings, offences, and injuries whatsoever, and also of the accessories of them, within the said county aforesaid, as well within liberties as without, by whomsoever, and in what manner soever, done, committed, or perpetrated, and by whom, or to whom, when, how, and after what manner; and of all other articles and circumstances concerning the premises and every or any of them, in any manner whatsoever; and the said treasons and other the premises, according to the laws and customs of England, for this time to hear and determine, by

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the oath of Sir Charles Mordaunt, Bart, Dugdale Stratford Dugdale, Charles Mills, Wriothsley Digby, Abraham Grimes, William Holbeck, Charles Gregory Wade, William Hamper, Charles Porter Packwood, Matthew Wise, John Boulton, Henry Cadwallader Adams, James Beck, William Harding, John Eardley, Eardley Wilmot, Samuel Edward Steward, James Woolley, Francis Baynon Hacket, Joseph Boulton the younger, Robert Middleton, attorney, William Staunton, and William Bedford, Esquires, good and lawful men of the said county of Warwick, then and there sworn, and charged to inquire for our said Lord the King, for the body of the said county, *the said Abraham Thornton*, by the name of Abraham Thornton, late of the parish of Aston, near Birmingham, *was indicted for a felony and rape committed upon the said Mary Ashford*, which said indictment follows in these words; that is to say—
‘ Warwickshire, to wit: The jurors for our Lord the King, upon their oath, present, that Abraham Thornton, late of the parish of Aston, near Birmingham, in the county of Warwick, labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the 27th day of May, in the 57th year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, with force and arms, at the parish of Sutton Coldfield, in the county of Warwick aforesaid, in and upon one Mary Ashford, spinster,

in the peace of God, and of our said Lord the King, then and there being, feloniously and violently did make an assault, and her the said Mary Ashford, against the will of her the said Mary Ashford, then and there did violate and know, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown, and dignity.' Whereupon the sheriff of the said county of Warwick was commanded, that he omitted not, by reason of any liberty in his bailiwick, but that he should enter the same, and take the said Abraham Thornton, and him safely keep, to answer the felony aforesaid, whereof he stood indicted. Which said indictment the said Justices afterwards, to wit, at the delivery of the gaol of our said Lord the King, of the said county of Warwick, holden at Warwick, in and for the said county of Warwick, on the said Saturday, the 2d day of August, in the said 57th year of the reign of our said Lord the King, before the Justices of our said Lord the King above-named, and others their fellows aforesaid, Justices of our said Lord the King, assigned to deliver his said gaol of the said county of Warwick of the prisoners therein being, by their proper hands did deliver there in Court of Record the said indictment, to be determined in due form of the law; and afterwards, to wit, at the same delivery of the gaol of the said Lord the King of the county aforesaid, on said 2d day of August, in the 57th year aforesaid, before the same Justices, and others their fellows aforesaid, there came the said Abraham Thornton, under the custody of the Honourable Henry Verney, sheriff of the county aforesaid, (in whose custody in the gaol of the county aforesaid, for the cause aforesaid, he had been before committed), being brought to the bar there in his proper person by the said sheriff, to whom he was there also committed, and forthwith being demanded con-

cerning the premises in the said indictment above-specified and charged upon him, how he would acquit himself thereof, he said that he was not guilty thereof, and thereof, for good and evil, he put himself upon the country; and Richard Lowndes, Esquire, clerk of the assizes for the county aforesaid, who prosecuted for our said Lord the King, by John Frederick Hilditch, gentleman, his deputy, for that purpose lawfully constituted and appointed, did the like. Therefore, it was awarded, that a jury should thereupon immediately come before the said Justices of the Lord the King above-named, and others their fellows aforesaid, of good and lawful men of the said county, by whom the truth of the matter might be better known, and who were not of kin to the said Abraham Thornton, to recognize upon their oath, whether he was guilty of felony in the indictment aforesaid above specified, or not; because, as well the said Richard Lowndes, Esquire, who prosecuted as aforesaid in this behalf, as the said Abraham Thornton, had put themselves upon the said Jury; and the said Jurors of the said Jury, by the said sheriff for this purpose impanelled and returned, to wit, Joseph Johnson, John Crook, George Hughes, Thomas Pope, John Allibone, William Bennet, John Harrison, George Tandy, John Tibbetts, Joseph Burge, Isaac Green, and Thomas Adams, being called, came, who being elected, tried, and sworn, to speak the truth of and concerning the premises, upon their oath, said, that the said Abraham Thornton was not guilty of the felony in the indictment aforesaid, above specified in manner and form, as he had for himself above by his plea alleged; nor had he withdrawn himself upon the occasion: upon which it was considered by the Court there, that the said Abraham Thornton, of the premises aforesaid, in the indictment aforesaid above specified, should be discharged and go thereof

without delay, as by the said *record of acquittal* of the said Abraham Thornton may more fully appear. And the said Abraham Thornton in fact saith, that he, the said Abraham Thornton, in the said writ of appeal and count mentioned, and the said Abraham Thornton in the said last-mentioned indictment mentioned, *are one and the same person*, and not other or different; and that the said Mary Ashford, in the said writ of appeal and count mentioned, and the said Mary Ashford in the said last-mentioned indictment mentioned, *are one and the same person*, and not other or different. And so the said Abraham Thornton saith; the several facts and circumstances in this replication set forth stronger and more violent presumptions, and are the stronger proof, that he the said Abraham Thornton is *not guilty* of the felony and murder whereof he is appealed as aforesaid, than the said presumptions and proofs in the said counterplea set forth, that he, the said Abraham Thornton, is guilty of the felony and murder whereof he is so appealed as aforesaid; and this he the said Abraham Thornton is ready to verify.

Wherefore he prays judgment, and *that he may be admitted to wage battle in this appeal* with him the said William Ashford, &c.

ABRAHAM THORNTON.

The affidavit of verification of the above was then read; and it simply stated, that the contents of the annexed replication were true.

Mr. Clarke.—My Lords, on the part of the appellor, I am to pray time to answer this replication. I hope your Lordship will allow us till Thursday next.

Lord Ellenborough.—Mr. Reader, what do you say?

Mr. Reader.—My Lord, I have no objection.

Lord Ellenborough.—Then take till Thursday next, when the parties must come up again.

The appellee was then removed from the bar in custody of the tipstaff, and

conveyed back to the King's Bench prison in the same manner he had been brought from thence. During these proceedings, he preserved the same apparent calmness and indifference to his situation.

Upon the prisoner being conducted from the court to the hackney coach which waited for him, he was pursued by an immense crowd, many of whom expressed their feelings upon his alleged guilt by groans and hisses. This was the first expression of popular indignation on the subject, and seemed considerably to affect the prisoner.

COURT OF KING'S BENCH, WESTMINSTER,

Thursday, Jan. 29.

This morning being appointed for the further proceedings in this case, the crowd, as usual, assembled long before the doors of the court were opened.

The prisoner was put to the bar about nine o'clock. At half-past ten Messrs. Clarke, Gurney, Richardson, and Chitty, on behalf of the appellor, and Messrs. Reader, Reynolds, and Tindal, (the latter for the first time,) for the appellee, took their seats as usual. At half-past ten Lord Ellenborough, Mr. Justice Abbott, and Mr. Justice Holroyd, entered the court, and took their seats; when

Lord Ellenborough called on Mr. Clarke move, in the usual course.

Mr. Clarke.—In the case of Ashford against Thornton; I have to state to your Lordships, that the Appellant is in court, and ready to put in his rejoinder to the replication of the Appellee.

The rejoinder was then handed to Mr. Le Blanc, who read as follows:

"In the King's Bench.—Thursday next after fifteen days of St. Hilary, in Hilary Term, in the 58th year of the reign of King George III.

" ASHFORD v. THORNTON.

" And the said William Ashford saith, that the said replication of the said Abraham Thornton to the said counterplea of him the said William Ashford, and the matters in the said replication contained, in manner and

form as the same are above pleaded and set forth, are wholly insufficient in law for him the said Abraham Thornton to be admitted to wage battel in this appeal with him the said William Ashford; and that he the said William Ashford is not bound by the law of the land to answer the same replication; and his be the said William Ashford is ready to verify: wherefore, for want of a sufficient replication to the said counterplea on this behalf, the said William Ashford prays judgment, and that the said Abraham Thornton may not be admitted to wage battle in this appeal with him the said William Ashford.

WILLIAM ASHFORD.
his X mark.

Mr. Reader (for the Appellee).—The rejoinder is now before your Lordships; and, on behalf of my client, I join demurrer immediately.

Mr. Clarke.—Your Lordships will be good enough to appoint a time for arguing this demurrer.

Lord Ellenborough.—Have you had any communication on the subject with the other side? If you agree on a convenient day, we shall accede to it.

Mr. Clarke.—The earlier, my Lord, the better.

Mr. Reader.—I suggest, looking to the situation of the Court, with respect to business, that we ought to consult its convenience rather than our own.

Mr. Clarke.—I have not consulted my own convenience at all.

Mr. Reader.—I do not mean to say that you have.

Lord Ellenborough.—It should be on the Crown Paper.

Mr. Justice Bayley.—No, it is on the civil side.

Lord Ellenborough.—Very true.

Mr. Clarke.—On Tuesday next, we would be quite ready.

Lord Ellenborough.—Stay;—it is suggested to me by my brothers, that Tuesday next is the great bail-day, and one of the Judges will be taken up a considerable time in the Bail-Court; therefore, perhaps, that will not be quite so convenient.

Mr. Clarke.—If your Lordship pleases, we will name Friday se'n'ight.

Mr. Reader.—Mr. Tindal, who is to

argue the demurrer for the appellee, will be ready by that date.

Lord Ellenborough.—Let it then be fixed for Friday the 6th of February.

Mr. Reader.—This case being rather out of the common course of things, I should be glad to know, whether it will be brought on as it is now, or set down regularly in the paper, and take its turn?

Lord Ellenborough.—We shall call it on first.

Mr. Reader.—I have been speaking to Mr. Platt, who states that no copy of the proceedings have been made out. It is, however, necessary that your Lordships should be furnished with copies of all the proceedings, which shall be made out immediately.

Lord Ellenborough.—Not immediately, but as soon as possible.

Mr. Reader.—You shall have them, my Lord, in the course of the day, I hope, or to-morrow, at furthest.

Lord Ellenborough.—Then on Friday 6th of February.

Mr. Reader.—When the parties must of course attend.

Lord Ellenborough.—Certainly.

Mr. Clarke.—I understand that in this proceeding the parties are not entitled to copies of the documents; if the adverse party will be so good as to direct that copies should be taken, they can be furnished, but otherwise what we shall send to your Lordships would be merely *ex parte*.

Mr. Reader.—I will, of course, gladly assist them with copies of my proceedings.

Mr. Justice Bayley.—You can arrange that very well between yourselves.

Mr. Reader.—They will have no difficulty on our part.

Mr. Justice Bailey.—You will hand to them a copy of your replication, receiving a copy of their counter-plea.

Lord Ellenborough.—As the joinder in demurrer is at present only *ore tenus*, it had better be engrossed.

The prisoner and William Ashford were about to leave the Court, the former having actually been taken from the bar, when Mr. Reader desired that they might return while the appellee delivered in his joinder in demurrer.

The joinder in demurrer was then handed to Mr. Le Blanc, who observed, that it was not properly entitled.

Mr. Tindal said, that as it was delivered in by the party *instantly*, it need not be entitled at all.

It was read as follows:—

“And the said Abraham Thornton saith, that the said replication of him, the said Abraham Thornton, to the said counter-plea of him, the said William Ashford, in manner and form above pleaded, with the several matters therein contained, are good and sufficient matters in law to allow him, the said Abraham Thornton, to wage his battle in this appeal with the said William Ashford; and which replication, and the matters therein contained, the said Abra-

ham Thornton is ready to verify and prove, as the court may direct. He therefore prays judgment, and that he may be permitted to wage his battle in this appeal with him, the said William Ashford.”

Lord Ellenborough. — Let the argument stand for Friday se’nnight.

The parties now retired from the court, and the prisoner was conveyed, as usual, in a hackney-coach, to the King’s Bench Prison.

. The following is a minute description of the form of a judicial combat, which was awarded by a court of law, in the proceeding on a writ of right, in the reign of Queen Elizabeth, 1571, extracted from STOWE:—

“The 1st of June, John Story, a Doctor of the canon law, who before had beene condemned of high treason, was drawne frome the Tower of London to Tiboerne, and there hanged, bowelled, and quartered, his head set on London bridge, and his quarters on the gates of the city.

“The 18th June, in Trinity Tearme, there was a combate appointed to have beene fought for a certaine manour and demaine lands belonging thereunto, in the Isle of Harty, adjoining to the Isle of Sheppey, in Kent. Simon Low and John Kyme were plaintifes, and had brought a writ of right against T. Paramore, who offered to defend his right by battell, whereupon the plaintifes aforesaid accepted to answer his chalenge, offering likewise to defend their right to the same manour and lands, and to prove by battell that Paramore had no right, nor no good title to have the same.

“Hereupon the said Tho. Paramore brought before the Judges at the Comon Place at Westminster, one George Thorne, a bigge, broad, strong set fellow: and the plaintifes brought Hen. Nailor, master of defence, and servant to the Right Honourable the Earle of Leicester, a proper slender man, and not so tall as the other. Thorne cast downe a gauntlet, which Nailor tooke up. Upon the Sunday before the battell should be tried on the next morrow, the matter was stayed, and the parties agreed, that Paramore, being in possession, should have the land, and was bound in 500 pound to consider the plaintifes, as upon hearing the matter the Judges should award. The Q. Majesty was the taker up of the matter in this wise. It was thought good, that for Paramore’s assurance, the order should be kept touching the combat, and that the plaintifes Low and Kyme should make default of appearance; but that yet such as were sureties of Nailor, their champion’s appearance should bring him in, and likewise those that were sureties for Thorne should bring in the same Thorne in discharge of their bond, and that the Court should sit in Tuthill-fields where was prepared one plot of ground one and twenty yards square, double railed for the combate, without the West square, a stage being set up for the Judges representing the Court of Common Pleas. All the compasse without the lists were set with scaffolds, one above another, for people to stand and behold. There were behinde the square where the Judges sate, two tents, the one for Nailor, the other for Thorne. Thorne was there in the morning timely. Nailor, about seven of the clocke, came through London, apparrelled in a doublet, and galey-gascoigne breeches, all of crimson sattin cut and raced, a hat of black velvet, with a red feather and band, before him drums and fifes playing. The gauntlet that was cast downe by George Thorne, was borne before the said Nailor upon a sword’s point, and his batten (a staffe of an ell long, made taper-wise, tipt with horne), with his shield of hard leather, was borne after him by Askam, a yeoman of the Queene’s gard. He came into the Pallace of Westminster, and staying not long before the hall door, came back into the King’s streete, and so along through the Sanctuary, and Tuthill streete, into the field, where he stayed till past nine

of the clocke, and then Sir Jerome Bowes brought him to his tent. Thorne being in the tent with Sir Henry Cheiney long before. About ten of the clocke, the Court of Common Pleas removed, and came to the place prepared. When the Lord Chiefe Justice, with two other his associates, were set, then Low was called solemnely to come in, or else hee to lose his writ of right. Then, after a certain time, the sureties of Henry Nailor were called to bring in the said Nailor, champion for Simon Low; and shortly thereupon Sir Jerome Bowes, leading Nailor by the hand, entreth with him the lists, bringing him downe that square by which he entered, being on the left hand of the Judges, and so about till he came to the next squares just against the Judges, and there making curtesie, first with one leg, and then with the other, passed forth till he came to the middle of the place, and then made the like obeysance; and so passing till they came to the barre, there hee made the like curtesie, and his shield was held up aloft over his head. Nailor put off his neather stockes; and so bare foote and bare legged, save his silke scanilions to the ancles, and his doublet sleeves tyed up above the elbow, and bare headed, came in as is aforesaid. Then were the sureties of George Thorne called to bring in the same Thorne; and immediately Sir Henry Cheiney entering at the upper end on the right hand of the Judges, used the like order in coming about by his side, as Nailor had before on that other side, and so coming to the barre with like obeysance, held up his shield, proclamation was made in forme as followeth:—The Justices command, in the Queene Majestie's name, that no person, of what estate, degree, or condition that he be, being present, to be so hardy to give any token or sigue, by countenance, speech, or language, either to the prover or to the defender, whereby the one of them may take advantage of the other; and no person remooove, but still keepe his place; and that every person and persons keepe their staves and their weapons to themselves; and suffer neither the said prover nor defender to take any of their weapons, or any other thing that may stand either to the said prover or defender any availe, upon paine of forfeiture of lands, tenements, goods, chattels, and imprisonment of their bodies, and making fine and ransome at the Queene's pleasure.

“Then was the prover to be swerne in forme as followeth:—This heare, you Justices, that I have this day neither ate, drunke, nor have upon me either bone, charm, amulet, nor any manner of sorcerie, or witchcraft wherethrough the Power of the word of God might be inleased or diminished, and the devils power increased; and that my appeale is true, so helpe me God and his Saints, and by this booke.

“After this solemne order was finished, the Lord Chiefe Justice, rehearsing the manner of bringing the writ of right by Simon Low, of the answer made thereunto by Paramore of the proceeding therein, and how Paramore had chalenged to defend his right to the land by battell, by his champion George Thorne, and of the accepting the trial that was by Low, with his champion Henry Nailor, and then for default in appearance in Low, he adjudged the land to Paramore, and dismissed the champions, acquitting the sureties of their hands. He also willed Henry Nailor to render againe to George Thorne his gauntlet, whereunto the said Nailor answered, that his Lordship might command him any thing but willingly he would not render the said gauntlet to Thorpe, except he would win it; and further, he chalenged the said Thorne to play with him halfe a score blowes, to shew some pastime to the Lord Chiefe Justice, and the other there assembled: but Thorne answered, that he came to fight, and would not play. Then the Lord Chiefe Justice, commending Nailor for his valiant courage, commanded them both quietly to depart the field, &c.”

In this case it will be seen that the parties fought by their champions. In matters of treason and murder this privilege was not allowed.